

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

REPLY BRIEF FOR THE APPELLANT

Ex parte Serge HAUMONT

SELECTING GGSN IN SHARED MOBILE NETWORK

Serial No. 10/500,874
Confirmation No. 1172
Appeal No.:
Group Art Unit: 2617

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Encl: Reply Brief

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re the Appellant:	Confirmation No. 1172
Serge HAUMONT	Appeal No.: Unknown
Serial Number: 10/500,874	Group Art Unit: 2617
Filed: July 7, 2004	Examiner: BRANDT, CHRISTOPHER M.
For: SELECTING GGSN IN SHARED MOBILE NETWORK	

REPLY BRIEF

May 21, 2010

I. INTRODUCTION

This Reply Brief is filed in response to the Examiner's Answer mailed March 22, 2010. In the Examiner's Answer, while no new grounds of rejection were explicitly made, comments and explanations are provided which are tantamount to new points of argument or which provide a need for further clarifying of the record. This Reply Brief, therefore, is submitted to address these new points of argument, and to clarify why claims 1-2 and 4-26 of the pending application should be considered patentable over Stille and Anderson, and therefore, should be found by this Honorable Board of Patent Appeals and Interferences to be allowable.

This Reply Brief addresses a few of the deficiencies of the Examiner's Answer. Appellant Appeal Brief, however, is maintained, and failure to repeat the arguments contained therein, or to address one or more arguments set forth in the Examiner's Answer

should not be construed as a waiver or an admission. The Appeal Brief speaks for itself, and this Reply Brief merely supplements the Appeal Brief to address certain aspects of the Examiner's Answer.

II. STATEMENT ON THE STANDARD OF REVIEW

It should be noted that the Examiner's Answer does not address the issue of the appropriate standard of review, and leaves this issue somewhat unclear. To clarify, Appellant respectfully submits that 35 U.S.C. 101 places the burden on the U.S.P.T.O. to show why a patent should not be granted on an application, rather than on the applicant to demonstrate patentability. As such, the appropriate standard of review is not whether Appellants have demonstrated error in the rejection, but whether the Examiner has established that the claims fail some test for patentability. Accordingly, rather than present positive arguments in favor of patentability, Appellant has concentrated on demonstrating that the grounds of rejection presented cannot support the rejection.

III. REBUTTAL TO EXAMINER’S RESPONSE

Appellant respectfully submits that the Examiner’s comparison between the cited art and the claims is inaccurate, and that consequently the Examiner’s conclusions are not supported by substantial evidence.

Appellant respectfully submits that the cited art is not close to what is claimed. Applicants note that significant light is shed by the disclosure provided by the original claims of the application, found in the application as filed at pages 12 and following and Figure 1. Although limitations from the specification are not to be read into the claims, the specification illumines and is a primary aid in construing the claims.

As shown in those claims, the mobile station (for example, MS1 or MS2 in Figure 1) can be served by a “serving network node” such as an SGSN (for example, SGSN1 of Figure 1). The mobile station can also have a relationship with a “gateway network node” such as a GGSN (for example GGSN1 or GGSN2) via the serving network node. As illustrated in Figure 1, a “serving network node” and a “gateway network node” are logically and functionally different entities from a base station (BS) and/or radio network controller (RNC). For example, the GGSN and SGSN lie in the core network (CN), whereas the BS and RNC which are in the radio network between Iu- and Uu-interfaces. Partner networks (for example, PLMN1 and PLMN2) may share the same serving network node (for example, SGSN1). Even the title of the application is “Selecting GGSN in Shared Mobile Network.”

The Examiner’s Answer has taken two divergent and inconsistent approaches to the

claims in order to arrive at a conclusion of obviousness. In one approach, the Examiner's Answer has treated the term "gateway network node" as referring to a GGSN and the term "serving network node" as referring to an SGSN. This is the approach used when applying Stille to the claims at pages 3-4 of the Examiner's Answer.

Nevertheless, Stille does not disclose or suggest "selecting, in the network apparatus, the [GGSN] of the home network if the mobile station is in a predefined partner network of the home network," as recited in claim 1. This is why, at page 5, the Examiner's Answer has acknowledged that Stille "fails to explicitly teach" both "selecting, in the network apparatus, the gateway network node of the home network if the mobile station is in a predefined partner network of the home network," and "checking, in a network apparatus, on the basis of the partner information whether a mobile station is in a predefined partner network of a home network," as recited in claim 1.

At page 5, the Examiner's Answer attempted to remedy these deficiencies of Stille with citation to Anderson. To apply Anderson, however, it was necessary for the Examiner's Answer to use a second and inconsistent interpretation of the claims.

Specifically, in the rejection, as explained by the Examiner's Answer both at pages 5 and 9, while applying Anderson to the claims, the "gateway network node" and "serving network node" are being interpreted as corresponding to two different base stations rather than an GGSN and an SGSN. Furthermore, selecting a "gateway network node" is being interpreted as performing a handover from one base station to another base station, rather than selecting a GGSN for the SGSN.

Not only is this interpretation at variance from the interpretation used while applying Stille, this interpretation of the claims is not the interpretation that one of ordinary skill in the art would arrive at, viewing the claims in light of the specification. Indeed, such an interpretation appears to be contrary to the light provided by the specification. It may be possible simply to resolve the appeal on this matter of claim interpretation, since the claim interpretation applied by the Examiner's Answer is plainly inconsistent with the disclosure provided in the specification, which is to be the primary guide in interpreting the claims.

Nevertheless, even if the claims are found to be broad enough that the "gateway network node" and "serving network node" could reasonably correspond to two different base stations (not admitted), and even if selecting a gateway network node could reasonably correspond to performing a handover from one base station to another base station (also not admitted), the cited art still would not lead one of ordinary skill in the art to arrive at the subject matter of the claims.

Specifically, contrary to the arguments set forth in the Examiner's Answer at pages 8-11 thereof, neither Stille nor Anderson (nor any combination thereof) discloses "selecting, in the network apparatus, the gateway network node of the home network if the mobile station is in a predefined partner network of the home network," as recited in claim 1 or as similarly recited in each of the other independent claims, each of which has its own respective scope.

This conditional selection of a gateway network node is specified in claim 1, with

the recited condition being “if the mobile station is in a predefined partner network of the home network.” It appears that the Examiner’s Answer has not properly appreciated the significance of this feature of claim 1.

In particular, Anderson was primarily relied upon as allegedly disclosing, “selecting, in the network apparatus, the gateway network node of the home network if the mobile station is in a predefined partner network of the home network,” as recited in claim 1.

However, Anderson, column 3, lines 39-65, explains the mobile station uses an “intelligent roaming procedure.” Specifically, the mobile station determines the particular classification of various service providers and uses the “intelligent roaming procedure” to select a best service provider based upon a hierarchy.

Anderson’s hierarchy does not suggest “selecting, in the network apparatus, the gateway network node of the home network if the mobile station is in a predefined partner network of the home network,” as recited in claim 1. In particular, there is nothing in Anderson’s hierarchy that indicates a preference for a gateway network node of a home network if the mobile station is in a predefined partner network of the home network.

Indeed, viewing the “gateway network node of a home network” as being a base station of a home network (as is being done in the rejection) and viewing “if the mobile station is in a predefined partner network of the home network” as being “if the mobile station is connected to a base station of a partner network” and further viewing “selecting” as handing over, it would not make sense to perform such a handing-over when the

“network operators share a serving network node,” that is the handed-over-from network base station is already shared by the home network (in the Examiner’s Answer interpretation).

While concepts of “home service provider,” “partner service provider” (which does not overlap in coverage with the home service provider), and “favored service provider” (which does overlap in coverage with the home service provider) are present in Anderson, Anderson does not disclose or suggest selecting a home service provider when a mobile station is in a network of a favored service provider.

Anderson does mention “intelligent roaming” but there is nothing about favoring a “home” base station over a shared “home” and “partner” base station. Indeed, there is not a concept of a shared “home” and “partner” base station in Anderson.

The closest that Anderson comes to such a discussion is the disclosure that a “favored service provider” may have overlapping coverage with a “home service provider.” However, such disclosure is insufficient to correspond (in any reasonable way) to the idea that “network operators share a serving network node.” Accordingly, Anderson cannot remedy the admitted deficiencies of Stille.

The Examiner’s Answer argued that “the selection of an access point is the selection of a network node as the network node controls an access point or base station.” This sentence is the basis for understanding the Examiner’s Answer as interpreting the various nodes as two different base stations and the “selecting” as handing over. Specifically, since the Examiner’s Answer stated that the “network node **controls** an access point” (emphasis

added) it would appear that the Examiner's Answer is considering the base station entity as a whole as corresponding to the gateway or serving node recited in the claim. However, if the Examiner's Answer is alleging that selecting a base station inherently involves selecting a particular GGSN, Appellant respectfully submits that Figure 1 of the present application provides contrary evidence. Namely, Figure 1 of the present application illustrates a situation in which selecting a base station does not inherently involve selecting a particular gateway node, since more than one gateway node can serve as the gateway node for the base station.

Accordingly, Anderson cannot remedy the deficiencies of Stille. In particular, Anderson does not disclose or suggest "selecting, in the network apparatus, the [GGSN] of the home network if the mobile station is in a predefined partner network of the home network," which is one thing that would be necessary in order for Stille's deficiencies to be remedied. There is no selection of any GGSN in Anderson, nor any suggestion of selecting any GGSN in Anderson. Furthermore, the selection of an access point (whether or not disclosed by Anderson) does not inherently involve selecting a GGSN "of the home network if the mobile station is in a predefined partner network of the home network." Accordingly, the rejection cannot be maintained on the grounds presented.

The Examiner's Answer has, however, presented what amounts to a new ground of rejection. In particular, the Examiner's Answer has attempted to resurrect a previous argument (seemingly contradictorily denied in the Examiner's Answer itself) that Stille itself actually does disclose "selecting, in the network apparatus, the gateway network node

of the home network if the mobile station is in a predefined partner network of the home network,” as recited in claim 1.

However, Stille explicitly states that it is “An object of the invention ... to determine which one of the owners of a shared radio network that a visiting MT (Mobile Terminal), which MT is not subscribed to any of the owners of said shared radio network, is going to be connected to, by deriving information from the visiting MT concerning its identity,” at paragraph [0011]. In other words, in Stille the situation is that the visiting mobile terminal is in a shared radio network (unlike the disclosure of Anderson above). However, even in Stille, the shared radio network is not shared by an owner to which the mobile terminal subscribers, *i.e.* to a “home” owner. Thus, whether Stille is considered alone or in combination with Anderson, it does not disclose all the features of claim 1, and Stille could not, because Stille has no corresponding disclosure to what is recited in the claims.

The Examiner’s Answer nevertheless stated that Stille discloses “selecting, in the network apparatus, the gateway network node of the home network if the mobile station is in a predefined partner network of the home network,” as recited in claim 1, at paragraph [0030] of Stille. The Examiner’s Answer specifically stated that “The HLR:s 10,11 are contacted and inform the SGSN 9 that the subscribers may use the AP[N]:s 12, 13 that are chosen.”

The Examiner’s Answer has accurately quoted a sentence of paragraph [0030] of Stille (except for a minor typo that has been corrected above), but the application of that sentence to the claims is totally obscure. APN:s are access point names. An APN

conventionally identifies an IP packet data network (PDN) that a mobile user wants to communicate with and/or defines a type of service, (for example, connection to wireless application protocol (WAP) server, multimedia messaging service (MMS)), that is provided by the PDN.

An APN is not an access point, as seems to be the implied contention in the Examiner's Answer. If the Examiner wishes to assert that an APN is an access point, it is respectfully requested that the Examiner must provide evidence to support such a contention.

On the other hand, if the Examiner's Answer has correctly understood what an APN is, there is no apparent connection between an HLR telling an SGSN about access point names and "selecting, in the network apparatus, the gateway network node of the home network if the mobile station is in a predefined partner network of the home network," as recited in claim 1. Accordingly, in either contingency the rejection is without substantial evidence and should be reversed.

The Examiner's Answer further dismissed the critical and unobvious advantages of certain embodiments of the present invention, because the advantages are alleged not themselves recited in the claims. This response appears to miss the evidentiary argument that was used in Appellant's Appeal Brief. Appellant was not arguing that the advantages themselves were recited limitations of the claims, but rather that these advantages are rebutting evidence of non-obviousness. The Examiner's Answer appears to have acknowledged that the advantages are real. As such, it is respectfully submitted that the

advantages would rebut a *prima facie* case of obviousness, if such a case were present (although, as noted above, Appellant respectfully submits that no such *prima facie* case has been presented).

Finally, Appellant respectfully submits that even if individual features of the claims may be found in the references, the references do not lead one of ordinary skill in the art to combine the features that would be needed to arrive at the claimed invention. Thus, for example, while the references make reference to such features as an SGSN (which may correspond, for example, to a serving network node), and to the concept of a shared network, and to partnerships between network operators, nevertheless one of ordinary skill in the art would have found no reason to combine these isolated features to arrive at the claimed invention. Thus, the Examiner's Answer's responses that the references "are combinable" and that "one of ordinary skill in the art would have been motivated to combine the references in order to provide Stille with [various benefits]" both fall short of the necessary motivation. Specifically, such a motivation would not have lead one of ordinary skill in the art to arrive at the claimed invention, even if the references themselves or their disclosed systems were somehow integrated. For this additional reason, reversal of the rejection is respectfully requested.

IV. CONCLUSION

As explained above and in the Appeal Brief, each of claims 1-2 and 4-29 recites subject matter which is neither disclosed nor suggested by Stille and/or Anderson (or any reasonable combination thereof). As such, Appellant respectfully submits that the Final Office Action has failed to establish a *prima facie* case for anticipation and/or obviousness of any claim. Furthermore, Appellant has presented sufficient evidence of non-obvious to overcome a *prima facie* rejection for obviousness, even if one could be presented. This final rejection being in error, therefore, it is respectfully requested that this Honorable Board of Patent Appeals and Interferences reverse the Examiner's decision in this case and indicate the allowability of all of pending claims 1-2 and 4-29.

In the event that this paper is not being timely filed, Appellant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees which may be due with respect to this paper may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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